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In re Application of	:	DECISION ON
GROVER, Raymond	:	
Application No.: 10/561,531	:	
PCT No.: PCT/IB2004/001779	:	
Int. Filing Date: 21 May 2004	:	
Priority Date: 31 May 2003	:	
Attorney's Docket No.: GB030081US1	:	
For: SEMICONDUCTOR DEVICE HAVING...	:	
OF MANUFACTURE THEREOF	:	37 CFR 1.181
		PCT LEGAL ADMINISTRATION

This Decision is in response to applicant's "PETITION TO WITHDRAW ABANDONMENT UNDER MPEP SECTION 711.03(c)" filed on 04 December 2007, which is being treating as a petition under 37 CFR 1.181 requesting that the above-identified application's declaration was timely filed on July 31, 2006 by facsimile.

BACKGROUND

In a decision from this Office on 19 May 2006, the petition to revive was granted.

On 06 July 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date." To avoid abandonment, the above items must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 30 November 2007, the United States Patent and Trademark Office mailed the Notification of Abandonment (PCT/DO/EO/909) since the applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 07/06/2009 within the time period set therein.

On 04 December 2007, petitioner submitted the instant petition stating that the declaration was allegedly timely filed by facsimile on 31 July 2006.

DISCUSSION

A petition under 37 CFR 1.181 filed under 37 CFR 1.8(b) Certificated of mailing or transmission must be accompanied by:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicants have satisfied items (1), and (3) but not item (2) under 37 CFR 1.8(b).

With regard to item (1) above, the present petition was promptly filed.

With regard to item (2) above, the present petition includes a copy of the previously transmitted correspondence and certificate of transmission.

With regard to item (3) above, section 512 of the MPEP states the following: "If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission." The present petition, which is signed by Peter Zawilski, states that the response was timely transmitted by facsimile. However, Mr. Zawilski is not the person who executed the Certificate of Transmission for the 31 July 2006 transmission, and he does not state "how he has firsthand knowledge of the previous mailing or transmission," as required by the MPEP (the petition does not include a confirming statement from Vihmana Naga, the person who signed the Certificate of Transmission).

Based on the above, the present submission does not satisfy the requirement of 37 CFR 1.8(b)(3). Accordingly, on the present record it cannot be concluded that the declaration was included with the present petition were originally filed by facsimile on 31 July 2006 as a timely response to the Notification Of Missing Requirements.

CONCLUSION

For the reasons discussed above, applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 and 1.8(b) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the mail date of the present decision and must include the materials required to satisfy 37 CFR 1.8(b)(3), as discussed above and in the MPEP. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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